

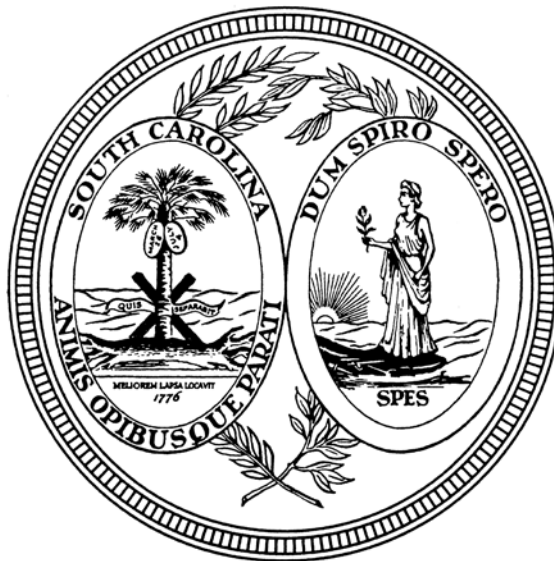


SOUTH CAROLINA GENERAL ASSEMBLY

# Legislative Audit Council

November 2010

## A REVIEW OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION



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# Legislative Audit Council

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## A REVIEW OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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# Introduction and Background

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## Audit Objectives

Members of the General Assembly requested the Legislative Audit Council (LAC) to conduct an audit of the South Carolina Workers' Compensation Commission (Commission). The requesters' concerns were the Commission's operations, systems, and management practices. The objectives of this compliance audit were to:

- Review a sample of contested cases to determine if the agency is ensuring that required forms are filed with the correct information for hearings and what types of benefits are sought by injured workers.
- Determine the Commission's compliance with approving attorney fees and costs.
- Review a sample of cases which had informal conference settlement agreements to determine if the forms filed were consistent with previous filings and contained the proper information, and to review the outcomes of those cases.
- Review the Commission's current process of hearing informal conferences and making award determinations.
- Obtain agency statistics regarding the administration of workers' compensation claims, including wait time for hearings to be scheduled.
- Examine the Commission's efforts to prevent employer workers' compensation fraud.
- Review the Commission's current procedures for referring injured workers to the S.C. Vocational Rehabilitation Department.

We did not examine the amount attorneys may charge claimants in South Carolina as compared to other states. Also, we did not compare the method of determining disability in this state, including the use of American Medical Association impairment ratings, to those in other states.

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## Scope and Methodology

The period of this review was generally July 1, 2009, through June 30, 2010, with consideration of earlier or more recent periods when relevant.

Information used as evidence in this report was obtained from a variety of sources including:

- State laws and regulations.
- Interviews with Commission staff, staff of other state agencies, and interested parties.
- Agency policies and procedures.
- Contested and appealed case files.
- Informal conference documentation.

Criteria used to measure performance included state laws and regulations and agency policies. We used two nonstatistical samples regarding the review of contested case files and compliance files, the results of which cannot be applied to the whole population. These samples are described in the audit report. We conducted one statistically valid sample regarding informal conferences, and the results can be applied to the whole population. The use of computerized data was not central to our audit objectives in that it was primarily used to identify hard copy files for review. We determined that the Commission's computer systems have controls in place and the servers are housed and managed by the Division of State Information Technology.

We conducted this performance audit in accordance with generally accepted government auditing standards with the exception of the general standard concerning quality control. Due to LAC budget reductions, funding was not available for a timely external quality control review. In our opinion, this omission had no effect on the result of this audit. Those generally accepted government auditing standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

The S.C. Workers' Compensation Commission (Commission) administers the South Carolina workers' compensation laws. The Commission consists of seven commissioners who are appointed to six-year terms by the Governor with the advice and consent of the Senate. The Commission appoints the executive director who is responsible for the daily administration of the Commission's departments, including claims, insurance and medical services, judicial, administration, and information services.

Approximately \$930 million of workers' compensation premiums were written in the commercial, self insurance, and State Accident Fund markets in calendar year 2009 and FY 09-10. During FY 09-10, the total amount paid out through the workers' compensation system as a whole was \$824,291,483. Of this amount, \$296,016,200 was reported by insurance carriers for medical payments for all claims closed during FY 09-10.

In June 2010, the S.C. Department of Insurance reviewed and approved a workers' compensation voluntary market loss costs and ratings values filing, submitted by the National Council on Compensation Insurance, Inc., allowing a 9.8% overall rate decrease in workers' compensation loss costs.

The agency's revenues and expenditures for the last three fiscal years are represented in Table 1.1.



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**Table 1.1: Workers' Compensation Commission Schedule of Revenues and Expenditures**

	FY 07-08	FY 08-09	FY 09-10
REVENUE			
Appropriations/General Fund	\$3,901,089	\$2,846,597	\$2,540,457
Earned Revenue by Commission	2,850,629	3,362,435	3,152,520
TOTAL	\$6,751,718	\$6,209,032	\$5,692,977
EXPENDITURES			
Appropriations/General Fund	\$3,429,698	\$2,846,318	\$2,315,986
Earned Revenue by Commission	2,099,416	3,062,408	2,931,978
TOTAL	\$5,529,114	\$5,908,726	\$5,247,964

Source: S.C. Workers' Compensation Commission and appropriation acts.

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## Who Is Required to Have Workers' Compensation Coverage?

With certain notable exceptions, every employer and employee in South Carolina is presumed to be covered by the state workers' compensation laws. Some of the exceptions to the workers' compensation laws include businesses which regularly employ less than four employees in the same business, railroad and railway express employees, certain casual employees, federal employees in South Carolina, and agricultural employees.

Employers covered by South Carolina's workers' compensation laws must maintain workers' compensation insurance or furnish proof to the S.C. Workers' Compensation Commission of their ability to pay the compensation in the amount and manner due to an injured employee.

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## What Happens When an Employee Is Injured on the Job?

An employee who is injured on the job should immediately report the accident to the employer or risk not receiving payment for medical fees and other compensation. Employees must report their injuries within 90 days from the date of the accident. Claims for compensation must be made within two years after the accident or date of death.

Employees may file an application for a Commission hearing if the employer does not report the accident, if the employer denies the injury was an on-the-job accident, or if the employee believes that he did not receive all of his benefits. An employer may file for a Commission hearing if the employer

and employee fail to reach a compensation agreement within 14 days after the employer had knowledge or notice of the accident. The employer may also file if there is a subsequent disagreement over the continuance of any weekly payment. Employees and employers may reach an agreement in an informal conference (see p. 12).

A hearing commissioner's decision may be appealed to a panel of three or six commissioners. A panel's decision may be appealed to a court of competent jurisdiction.

In FY 09-10, 2,211 cases were heard before a commissioner. Appealed cases heard by the full commission totaled 357, and 178 cases were appealed beyond the Commission.

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## What Benefits are Covered Under Workers' Compensation?

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An employee covered by South Carolina's workers' compensation laws may receive compensation for personal injury or death for accidents arising out of and in the scope of his employment. Workers' compensation pays for the employee's necessary medical treatment, loss of wages during a period of disability, and compensation for permanent disability or disfigurement. Employees who are injured and unable to work for more than seven days are eligible to be compensated at a rate of  $66\frac{2}{3}\%$  of their average weekly wages, limited to 100% of the state's average weekly wage. With some exceptions, the maximum award for total disability or death is limited to 500 weeks of compensation. Any person determined to be totally and permanently disabled who, as a result of a compensable injury, is a paraplegic, a quadriplegic, or who has suffered physical brain damage is not subject to the 500 week limitation, and shall receive benefits for life. Amounts of compensation for partial disability or disfigurement are established and limited by statute or regulation. The awards are made by the Commission and are based on the number of weeks of compensation to which the employee is entitled based on the extent of injury. Body parts are assigned values represented by number of weeks of compensation.

For example, the loss of an eye would result in 140 weeks of compensation, and the loss of a hand would equal 185 weeks of compensation. The Commission may assign a percentage for partial injury to the body parts listed.

For example, an employee who has an average weekly wage of \$450 would receive a compensation rate of \$300 ( $66\frac{2}{3}\% \times \$450 = \$300$ ). The total loss of an arm equals 220 weeks of compensation. If an employee has an injury that the Commission determines to be a 10% loss of use to the arm, that employee would receive \$6,600 ( $10\% \times 220 \text{ weeks} \times \$300 = \$6,600$ ).

Disability or death caused by an occupational disease is treated as an injury by accident. An occupational disease is a disease caused by a hazard recognized as peculiar to a particular trade, process, occupation, or employment as a direct result of continuous exposure to normal working conditions. South Carolina also has special provisions for employees who have suffered the effects of exposure to ionizing radiation.

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## What Changes Did the 2007 Reform Cause?

In 2007, changes to the workers' compensation law went into effect for injuries that occur on or after July 1, 2007. Among the provisions of the 2007 reform, appeals from the full commission will go directly to the Court of Appeals. The 2007 reform also stipulates that stress, mental injuries, and mental illness are no longer considered a personal injury unless a preponderance of the evidence supports that the employment conditions causing the condition were extraordinary and unusual in comparison to the normal conditions of the employment, and medical evidence supports the causation. The 2007 reform also states that, in "medically complex cases," employees must show by medical evidence that an injury arose in the course of employment.

The 2007 reform requires injured or affected body parts to be set forth as specifically as possible in the notice of claim and/or request for hearing. Claimants may no longer describe injured body parts or conditions as "whole person" injuries. If a hearing form does not conform to this legislation, a hearing is not to be held. In addition, an employer's response may no longer state that "all defenses apply" and must instead describe, with as much specificity as possible, the employer's defenses. The 2007 reform also addresses repetitive trauma injuries. The legislation requires that there must be a specific finding of fact by a commissioner based on a preponderance of evidence that there exists a causal connection (established by medical evidence) between repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the repetitive trauma injury. The right to compensation is barred for a repetitive trauma injury unless the claim is filed within two years after the employee knew or should have known that the injury is compensable, but no more than seven years after the last date of injurious exposure. This is regardless of whether the employee was aware that the injury was a result of his employment.

The 2007 reform added the shoulder and hip as "scheduled members" for compensation purposes. The shoulder has a total value of 300 weeks and the hip has a total value of 280 weeks. Additionally, the 2007 reform stipulates that, if permanent disability of the back is 50% or more, there is a rebuttable presumption that the employee is permanently and totally disabled.

The 2007 reform also creates penalties to be assessed for a defendant's refusal to provide medical treatment or benefits ordered by the Commission. The 2007 act states that if a claimant brings an action to enforce an order authorizing the payment of medical treatment or benefits and the Commission determines that an insurer, self-insured employer, self-insured fund, or adjuster has acted without good cause in failing to make the payment, then the claimant's attorney's fees and costs in enforcing the order will be assessed. Also, the Commission may impose a fine of up to \$500 per day for a willful disobedience of an order.

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## What Recent Changes Has the Commission Made?

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The Commission is in the last phase of implementing a computer system purchased in 2005. Based on current projects, the agency's projected date for completion of this phase is December 2011. In December 2008, the agency started scanning documents to move closer to a paperless environment. In addition, the Commission piloted a program to electronically serve hearing notices and decision and orders beginning in January 2010. The agency's goal for the eFiling program is to incorporate work flow in order to streamline the process based on state regulations.

According to Commission statistics, the wait time for hearings has decreased. From FY 05-06 to FY 09-10, the number of days from the last request for a hearing to the actual hearing date had decreased from approximately four months to approximately three months, which includes a required 30-day period of notification of the parties. The wait time for appeals has decreased as well.

The Commission also adopted a new hospital inpatient and outpatient fee schedule in 2006. According to the National Council on Compensation Insurance (NCCI), the new fee schedule will result in an overall workers' compensation system cost decrease of 5.3%. This represents a total savings of \$97,774,779 for the two-year period of FY 08-09 and FY 09-10.

# Compliance and Administrative Issues

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In this chapter, we address two issues of non-compliance with state laws and regulations by the Commission. We also discuss the Commission's efforts to identify uninsured employers and how it can improve its efforts to refer claimants to obtain vocational rehabilitation services. We reviewed the informal conference process and, lastly, we discuss our compliance review of contested cases handled by the Commission.

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## Untimely Deposit of Checks

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From May 1, 2010, through June 4, 2010, Commission had assessed fines against South Carolina employers and carriers and collected checks totaling more than \$244,000. These checks were not deposited in state accounts.

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The S.C. Workers' Compensation Commission violated state law by not depositing checks received for fines in a timely manner. At the April 2010 S.C. Workers' Compensation Commission business meeting, the full commission voted unanimously to defer the collection of fines for the months of May and June 2010 until July 1, 2010. This action was taken so that, in the event the General Assembly prohibited agencies from keeping their unexpended funds at the end of the fiscal year, the Commission would not have these funds for the General Assembly to take away.

We interviewed staff and found that the Commission continued to assess and collect fines, but held all checks to deposit after July 1, 2010, the beginning of the next fiscal year. From May 1, 2010, through June 4, 2010, the Commission had assessed fines against South Carolina employers and carriers and collected checks totaling more than \$244,000. These checks were not deposited in state accounts.

Failing to promptly deposit fines, fees, or any other funds the agency collects violates state law. Proviso 89.1 of the 2009-10 appropriations act requires "...revenues or collections...must be remitted to the State Treasurer at least once each week...." Section 11-13-120 of the S.C. Code of Laws states that "All...State agencies charged with the collection of...any income to the State shall, with ordinary business promptness, deposit the same when collected...."

We notified management of this violation on June 9, 2010. The next day, we were notified that the agency would immediately cease the practice of holding checks and begin processing all checks for deposit that were being held. We reviewed documentation of deposits and found that \$244,000 in checks had been deposited within three working days of our notification to the agency.

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## Recommendation

1. The S.C. Workers' Compensation Commission should deposit all checks in accordance with state law.

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## Public Affairs and Ombudsman Duties

S.C. Regulation 67-202.A.(12) defines the Commission's public affairs (formerly public assistance) division as the division responsible for responding to the general inquiries of employees and employers concerning their rights, benefits, and obligations under the workers' compensation act. Also, in FY 05-06, the General Assembly specifically funded a new position for an ombudsman. The Commission had addressed these responsibilities with one employee; however, as of July 2010, there was no division nor employee whose duties were specifically to act in these capacities.

The Commission had employed a director of public affairs and special projects who reported directly to the executive director. This employee also acted in the role of an ombudsman. However, upon this employee's separation from the agency in June 2010, the full commission voted to leave the position vacant indefinitely. According to the executive director, the Commission determined that, due to budget constraints, it would not be prudent to fill the position at this time. The executive director stated that the former director of public affairs and special projects' duties will be divided among various employees within the agency, but the executive director will be ultimately responsible for handling calls and inquiries from claimants, legislators, and the general public.

It is important for the agency to have a designated person to handle inquiries of injured workers and employers of this state regarding the workers' compensation system.

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## Recommendation

2. The S.C. Workers' Compensation Commission should designate an ombudsman/public affairs officer.

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## Identifying Uninsured Employers

In its efforts to detect and prevent employer workers' compensation fraud, the Commission's compliance division identifies employers which should have workers' compensation insurance, but do not. To improve these efforts, the Commission should consider establishing an additional compliance officer position.

We interviewed staff and reviewed a non-statistical sample of compliance files to determine what the agency is doing to address the issue of employers with no workers' compensation insurance.

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Adding a compliance officer position could increase fines and deter noncompliance with workers' compensation laws.

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There are several ways a compliance file can be initiated:

- If a claimant files a claim and the initial review for coverage determines that the employer is uninsured, the compliance division is notified. The division is responsible for determining if there is coverage or whether there should be coverage.
- The S.C. Department of Employment and Workforce (formerly the Employment Security Commission) database of employers with 6 to 20 employees is run against and compared to the Commission's coverage database at least twice a year. The compliance division follows up on some of the matches in an effort to determine if the employer has or should have workers' compensation insurance.
- Compliance employees randomly look up employers in its coverage database system to determine if they have or should have workers' compensation insurance.
- Requests from other divisions are researched to determine employer or carrier information.

According to agency statistics, 1,100 compliance files were opened for further investigation in FY 09-10. Of these, 398 were opened because of an uninsured claim, 606 were initiated from the database comparison, and 96 were identified from random checks.

At the time of our audit, there were two compliance officer positions as well as the director. One position had been vacant for approximately three months. The monthly goal for each officer is to follow up on at least 50 matches from the database comparison. On June 15, 2010, the database comparison yielded 2,125 employers with 6 to 20 employees for which the Commission's database was not showing workers' compensation coverage.

When the Commission investigates and determines that an employer does not have proper workers' compensation insurance, it contacts that employer requesting them to comply with the workers' compensation act and assesses a fine of at least \$750. Fines from the compliance division can vary. The goal is to have the employer sign the compliance agreement, obtain workers' compensation insurance, and pay the fine.

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## Fines

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The compliance division reported a monthly average of fines collected in FY 09-10 to be \$37,225 with a yearly total of \$446,702. Fines decreased for a brief period when there was only one compliance officer position filled. Officials predict that fine collections will increase again since a new compliance officer was hired to fill the vacant position.

Since each officer is expected to follow up on 50 matches from the database comparison and handle files initiated through other methods, this leaves a significant number of matches which the Commission does not have the staff to address.

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### New Compliance Officer Position

If the compliance division were to hire an additional compliance officer, this should generate more revenue for the agency and detect uninsured employers. The salary and fringe benefits of an entry-level compliance officer position would cost the agency approximately \$40,000. If the current average fine collection per month is \$37,225, we estimate that a third compliance officer could increase that amount substantially and those fines would pay for this position and provide additional revenue. According to staff, if an additional compliance officer position is added, there would also be a need for an additional administrative person. The total cost of an administrative position would be approximately \$33,000. The Commission would need to determine if this would be the best use of its limited resources since the administrative position would not be revenue generating.

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### Workers' Compensation Advisory Committee

Hiring an additional compliance officer would also address one of the main concerns of the Workers' Compensation Advisory Committee. This five-member committee was created to consider improvements of the workers' compensation laws of South Carolina and to present an annual report to the General Assembly. In its October 2008 meeting, one topic identified by the committee requiring further study was more stringent regulation/penalties for employers who are evading their workers' compensation responsibilities or who are misclassifying employees.

The December 2009 report to the General Assembly stated that it was the unanimous consensus of the committee that an effective way to lower the cost of workers' compensation insurance in South Carolina is to bring more employers into compliance with the state's workers' compensation act.

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## Recommendation

3. The S.C. Workers' Compensation Commission should add an additional compliance officer position to increase fine collections and bring more uninsured employers into compliance.



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## Referral of Claimants to Vocational Rehabilitation

The S.C. Workers' Compensation Commission could improve its efforts to refer claimants needing vocational counseling, evaluation, training, or placement to the S.C. Vocational Rehabilitation Department (Voc Rehab). We found that the Commission does not regularly refer claimants for services through Voc Rehab.

S.C. Code §42-3-80 states that the executive director of the S.C. Workers' Compensation Commission shall be responsible for the referral to the S.C. Vocational Rehabilitation Department of all industrially injured persons that need vocational counseling or vocational evaluation, personal adjustment, training and placement. The Commission does not have a formal agreement with Voc Rehab in order to fulfill S.C. Code §42-3-80. According to a Commission official, the Commission does not have a formal referral process and does not keep statistics on referrals.

The Commission allows an employee from Voc Rehab's Richland County office to visit the Commission offices on a regular basis. That employee downloads a list of workers' compensation claimants in Richland County who are identified as being limited in performing daily functions to notify them of Voc Rehab's services. A Voc Rehab official stated that other than the Richland County office, there is no other Voc Rehab office in South Carolina that has a referral relationship with the Commission.

An official with the Commission stated that he has arranged a meeting with Voc Rehab's Richland County area supervisor to discuss ways in which the Commission and Voc Rehab can better coordinate their services. This type of contact should be made with other Voc Rehab offices across the state to ensure that all workers' compensation claimants, not just the ones in Richland County, are properly referred. Agreements between the two agencies should be formalized to ensure that eligible claimants across the state will be notified of vocational rehabilitation services.

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## Recommendations

4. The S.C. Workers' Compensation Commission should implement a formal policy for referring claimants to the S.C. Vocational Rehabilitation Department. This policy should ensure that eligible claimants from all South Carolina counties are notified of the S.C. Vocational Rehabilitation Department's services.
5. The S.C. Workers' Compensation Commission should develop a memorandum of understanding with the S.C. Vocational Rehabilitation Department regarding the referral of workers' compensation claimants for vocational rehabilitation services.

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## Informal Conference Process

As part of our review of the S.C. Workers' Compensation Commission, we observed informal conferences and reviewed documentation of a sample of informal conference files to assess compliance with state regulations and Commission standards. We found inconsistencies in how the informal conferences were held and found that additional information is needed in the files. We found that the Commission's process could be improved by establishing guidelines, training claims mediators, and requiring checklists to ensure that claimants are informed of all their rights. Formal training of staff conducting these informal conferences could ensure more consistency and equity in the process.

Informal conferences are meetings involving the claimant, the employer's representative, and a claims mediator who is an employee of the Commission. These conferences are governed by several regulations in Chapter 67 of the S.C. Code of Regulations. At informal conferences, the parties discuss the claim and the claims mediator proposes a settlement of the claim. If both parties reach an agreement at the informal conference, the parties will sign the agreement. A commissioner must approve the claims mediator's recommendation before the settlement is recorded as binding. If either party objects to the proposed settlement, the claim will be scheduled for a formal hearing. Between July 1, 2009, and June 30, 2010, agreements totaling \$31,589,132 were reached at informal conferences.

At the time of our audit, four Commission employees working in differing capacities at the Commission served as claims mediators. We determined that all of the Commission employees currently serving as claims mediators have the professional background and expertise in the area of workers' compensation to serve in this capacity. However, there are no formal qualifications or training requirements to serve as a claims mediator.

The audit team observed approximately 20 informal conferences conducted by the four Commission employees. Most of those conferences resulted in a settlement. We noticed several differences in the ways the four claims mediators conducted the conferences. Some claims mediators informed claimants of the following rights, and some did not. All claimants should be consistently notified of the following:

- **Right to a Formal Hearing**  
Claimants at the informal conferences have a right to request a formal hearing if they disagree with the recommendation of the claims mediator.
- **Payment of Medical Expenses**  
Claimants are generally entitled to necessary medical expenses that are likely to lessen their disability.

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Formal training of staff conducting informal conferences could ensure more consistency and compliance with Commission standards.

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- **Mileage**  
S.C. Regulation 67-1601 provides for the reimbursement of the expenses incurred by a claimant for travel over five miles to receive medical attention.
- **Tax Free Benefits**  
The settlement amount agreed to at an informal conference is tax-free.
- **One-Year Period for Additional Claims**  
If a claimant's injury worsens, he has one year from the date of his last payment to contact the employer or insurance company representative to let them know about his concerns. Those employees may be entitled to additional medical treatment or disability payments if they report within that one-year period.

Contrary to Commission documentation, we also found that the claims mediators proposing settlements were considering factors other than how the injury affected the employee's ability to earn wages which the employee was earning at the time of injury in the same or any other employment. Documentation provided by the Commission states that claims mediators should not consider issues of how the injury affected an employee's life outside of work.

Improvements can be made in the informal conference process that would help ensure the quality and consistency of the conferences for the parties involved. Claimants who attend informal conferences should receive the same information regarding the workers' compensation process and have their settlement proposals handled similarly regardless of the claims mediator. All claimants should be informed of all of their rights and receive the same information.

In reviewing informal conference documents, we noticed that one former claims mediator for the Commission included a "checklist" in each of his files that documented information covered during the informal conference. This checklist included a box labeled "Rights Explained to Claimant." A similar checklist could be used to ensure that each claims mediator explains rights to the parties involved in informal conferences.

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## File Documentation

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To assess compliance with state regulations, we also examined a statistically valid sample of 95 of 5,362 informal conference files from calendar years 2008 and 2009. We selected files from a population of cases in which both parties agreed to the permanent partial disability award amount recommended by the mediator.

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Most files appeared to have all required documentation; however, we found that the files did not contain sufficient information to assess compliance with Commission requirements.

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In our sample, we found that in 17 (18%) of the files, the body parts assigned an impairment rating by the physician did not correspond directly to the body parts on which a disability rating was proposed. For example, the physician in one case assigned a 2% impairment to the upper extremity and the claims mediator proposed a disability rating of 25% to the thumb. In this type of case, it is difficult to determine how the impairment rating and the disability rating correlate. We also found three of the files dealt exclusively with cases of disfigurement that did not involve physician's impairment ratings.

In the majority of the remaining 75 (79%) case files, the proposed settlements for injured workers varied and it was unclear why a certain settlement was proposed. Commission standards or guidelines for claims mediators to use would help to ensure consistency in proposed settlements.

To propose a settlement, claims mediators consider certain factors, including the physician's impairment rating, which is defined as a percentage estimate of loss of activity reflecting severity for a given health condition and the degree of associated limitations in terms of activities of daily living. The claims mediators take into account activity limitations and/or participation restrictions of the claimants as well as factors not included in the physician's impairment rating, such as the claimant's job duties. An agency official stated that what settlement amount to propose is at the discretion of the individual claims mediator.

Most of the files we examined appeared to have all legally required documentation. This documentation included a form showing the amount of compensation paid to the claimant, the agreement to the compensation amount, a first report of injury, and documentation of the physician's impairment rating.

Although most information relevant to the informal conferences could be found in the files we examined, certain relevant information was not in the files. The files did not contain sufficient information to assess compliance with Commission standards regarding the claims mediator's proposed settlement.

Additionally, most of the files of the current claims mediators we examined did not include a checklist or other documentation that the parties were informed of their right to appeal the claims mediator's recommendation; entitlement to payment of medical expenses; reimbursements for medical treatment; the tax-free status of their benefits; or the one-year window to file additional claims.

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## Recommendations

6. The S.C. Workers' Compensation Commission should develop guidelines for conducting informal conferences. These guidelines should include what should be considered in determining proposed settlements, instructions regarding the parties' right to a formal hearing; the claimant's right to receive payment of medical expenses; the claimant's right to certain travel expenses; the tax-free status of benefits; and the one-year period for additional claims.
7. The S.C. Workers' Compensation Commission should train claims mediators who conduct informal conferences regarding established guidelines.
8. The S.C. Workers' Compensation Commission should ensure that claims mediators complete an agency checklist for each settlement to ensure that the parties are notified of their rights at informal conferences.
9. The S.C. Workers' Compensation Commission's claims mediators should document what information was considered for the proposed settlement.

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## Contested Case Files

Based on the audit request, we reviewed a sample of contested and appealed case files to determine if they were complete and if they were processed in compliance with state laws and regulations. Overall, we did not identify significant issues with these files. We focused our review on:

- ***Requests for Hearings (Form 50) and Employer's Answer to Request for Hearing (Form 51)*** – We checked to see if the request and the employer's answer were in the file, if the date of injury matched, and which injured body parts were listed on the Form 50.
- ***Form 58 – Pre-Hearing Briefs*** – We verified that both parties had submitted these documents, when required, and that the body parts for which compensation was sought were the same as when the hearing was requested.
- If the case was heard by a commissioner and a decision and order was produced, we verified that all supporting evidence, including the physician's impairment rating, was in the file.
- ***Form 19 – Status Report and Compensation Receipt*** – We checked to see if this document was in the file, and if it was signed after the decision and order was signed.
- ***Form 61 – Attorney Fee Petition*** – We reviewed the files to determine if this document was submitted and approved properly.

We reviewed a non-statistical sample of 49 (2%) of 2,433 contested cases that were closed during the most recent 12 months available: May 1, 2009, through April 30, 2010. We also reviewed 6 (2%) of 287 cases from the same time period which were appealed to the full commission.

In our sample of contested cases, there were 14 (29%) cases decided by the commissioners by decisions and orders. The remainder of the cases were closed by consent orders or clincher agreements (which function as final settlements between the parties). All six of the sample cases that were appealed to the full commission were closed by a decision and order.

We found that in 16 (33%) contested files, the Form 19 was signed before the commissioner had signed the decision and order with the award amount specified. The Form 19, Status Report and Compensation Receipt, states: "By signing this receipt, I acknowledge that I have received the compensation shown above". It is then signed and dated by the claimant and employer's representative. When asked why an award would be paid prior to the decision being finalized, a Commission official explained that the Form 19 is controlled by the insurance carrier. Both parties know the amounts to be awarded according to the commissioner's instructions for writing the order, and the carrier may prepare and deliver the check at its own discretion.

Overall, the files for contested cases and cases appealed to the full commission were complete and forms were filed timely, appropriately, and in compliance with state law.

# Agency Comments

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# State of South Carolina

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## *Workers' Compensation Commission*

November 18, 2010

Mr. Thomas J. Bardin, Jr.  
Legislative Audit Council  
1331 Elmwood Avenue  
Columbia, SC 29201

Dear Mr. Bardin:

Thank you for the opportunity to comment on the Legislative Audit Council's report *A Review of the South Carolina Workers' Compensation Commission, November 2010*. The Workers' Compensation Commission appreciates the professional manner in which the audit team interacted with Commission employees during the audit process, and the positive recognition of the substantial improvements the Commission has made over the past several years, including more timely hearings, information technology system upgrades, and hundreds of millions of dollars in cost reductions to the system by the implementation of the Inpatient and Outpatient Hospital Fee Schedule. Working with the auditors during this process assisted us with our continuous improvement efforts in order to better serve the citizens and businesses of South Carolina.

The following are our comments and responses to the information and recommendations in the report.

### **Background**

*During FY 09-10, the total amount paid out through the workers' compensation system as a whole was \$824,291,483. Of this amount \$296,016,200 was reported by insurance carriers for medical payments for all claims closed during FY 09-10. (Page 2)*

To clarify, \$824,291,483 was the amount paid through the workers' compensation system for all cases closed during FY 09-10. The amount reported reflects the total amounts paid on the claim, in some instances over multiple years prior to the closing of the case.

The amount of medical costs reported (\$296,016,200) for cases closed in FY 09-10 does not take into consideration future medical expenses paid if so ordered by the Commission. The insurance carrier is not required to report medical expenses incurred after the Decision and Order has been served and the case is closed at the Commission. Medical cost is one component of the total cost of the workers' compensation system. As shown in the table below medical costs decreased by \$126.4 million between FY 08-09 and FY 09-10. Indemnity cost experienced a slight increase of \$28 million.

#### Total System Cost

	<u>FY 07-08</u>	<u>FY 08-09</u>	<u>FY 09-10</u>
Medical	\$332,226,192	\$422,442,693	\$296,016,200
Indemnity (Compensation)	<u>\$564,668,920</u>	<u>\$500,298,190</u>	<u>\$528,275,283</u>
Total	\$896,565,112	\$922,740,888	\$824,291,483

Source: SC Workers' Compensation Commission Statistical Report – Attachment A

Indemnity or compensation payments are made to claimants for injuries resulting in temporary (partial or total) disabilities or permanent (partial or total) disabilities. Indemnity payments for temporary or permanent disabilities are determined by either an agreement between the claimant and employer/insurance carrier or an award by the Commission. For FY 09-10 total indemnity paid was \$528,275,283.

Agreements between the claimant and employer/insurance carrier resulted in 94% of the total indemnity paid for cases reported closed in FY 09-10. During the same reporting period, awards by Commissioners resulted in 6% of the total indemnity paid. Attachment B provides a total of the indemnity paid by category.

The amount of premiums paid may be considered as one benchmark of the cost of workers' compensation in South Carolina. The amount of premiums paid reported by the Department of Insurance for calendar year 2009, the State Accident Fund for Fiscal Year 2010 and estimates of the amount of premium paid by self insured employers for FY 2010 premiums paid by employers totaled \$930,270,665. Attachment C provides the premiums reported paid for calendar year 2009 and fiscal year 2010.

As shown in the table below, the total amount of permanency indemnity awarded by Commissioners for FY 09-10 amounted to less than 2% of the total amount of premiums paid.

Total Premiums Paid (Attachment C)	\$	930,270,665
Total Permanency Awards (Attachment B)	\$	14,305,954
Percent of Premiums Paid		1.53%

*According to Commission statistics, the wait time for hearings has decreased. From FY 05-06 to FY 09-10, the number of days from the last request for a hearing to the actual hearing date decreased from approximately four months to approximately three months, which includes a required 30-day period of notification of the parties. (Page 6)*



We appreciate the Council's recognition of the improvements the Commission made in reducing the time required to schedule a hearing from four months to three months from FY 05-06 to FY 09-10. However, more significant improvements were made between FY 03-04 and FY 09-10, when the Commission reduced the waiting time to schedule a hearing from approximately eight months in FY 03-04 to slightly more than 3 months in FY 09-10. The Hearings and Appeals Scheduling Report is Attachment D. It contains the average number of days to process request for hearings and appeals for the FY 02-03 through FY 09-10.

*The Commission also adopted a new hospital inpatient and outpatient fee schedule in 2006. According to the National Council on Compensation Insurance (NCCI), the new schedule will result in an overall workers' compensation system cost decrease of 5.3%. This represents a total savings of \$97,774,779 for the two-year period of FY 08-09 and FY 09-10 (Page 6)*

The \$97,774,779 of total savings is an estimate derived by using NCCI's 5.3% projected cost savings per year and the total compensation and medical cost reported paid on closed cases for the two year period. The actual total medical cost reported for the two years after the Commission adopted the hospital inpatient and outpatient fee schedule went down by \$126.4 million. The hospital fee schedule is one component of the total medical cost to the system. We are unable to calculate the direct impact the fee schedule had on total medical cost because of litigation occurring between 2006 and 2010. A group of ambulatory surgery centers, a component of the services regulated by the fee schedule, were involved in litigation with the Workers' Compensation Commission and were not required to comply with the new fee schedule pending the outcome of the litigation. On October 6, 2010 the litigation ended and the SC Supreme Court ruled the ambulatory surgery centers are subject to the fee schedule. As a result of this decision we anticipate further reductions to the medical cost of the system in future years.

### **Compliance and Administrative Issues**

*The S. C. Workers' Compensation Commission violated state law by not depositing checks received for fines in a timely manner. (Page 7)*

The Commission appreciates the Council bringing this to the attention of the Commission. The intent of the unanimous action taken by the Commission in open session at the April 2010 Business meeting was to delay the assessment and collection of the fines until after the beginning of the new fiscal year for financial and budgetary implications. However, this was not clearly understood and from May 1, 2010 to June 4, 2010 staff delayed depositing checks totaling \$244,000. This activity took place over a period of five weeks and upon notification by the Council's auditors of this violation, the Commission immediately ceased this practice and deposited all of the checks within three working days.

### **Public Affairs and Ombudsman Duties**

*It is important for the agency to have a designated person to handle inquiries of injured workers and employers of this state regarding the workers' compensation system.*

(Page 8)

*The S.C. Workers' Compensation Commission should designate an ombudsman/public affairs officer. (Page 8)*

The Commission agrees it is important for the agency to have a designated person to handle inquiries of injured workers and employers. The executive director is designated as the ombudsman/public affairs officer.

S.C. Regulation 67-202 A (12) cited in the report defines the Commission's Public Affairs Division (formerly Public Assistance). The regulations contain no specific requirements for the Commission to fund the Public Affairs Division or ombudsman position. Section 42-3-90 of the S. C. Code of Laws establishes three divisions with the Commission's Administrative Department. The statute does not include a requirement for a Public Affairs Division. In FY 05-06 the General Assembly approved funding for the position of ombudsman however for FY 08-09 and FY 09-10 the General Assembly reduced the Commission's budget by 30.5%. This reduction in funding required the Commission to evaluate the core functions and business processes to determine where expenditures may be reduced. The Commission implemented a Reduction-in-Force program eliminating four positions whose functions were either absorbed by existing positions or out-sourced. Subsequently before vacant positions are filled, its duties and responsibilities are evaluated to determine if they could be re-assigned without a reduction in service level

Prior to the ombudsman's position becoming vacant, staff began measuring activities and outcomes of its duties and responsibilities. When the vacancy occurred, the Commission evaluated the duties and responsibilities and determined the ombudsman/public affairs services could be carried out by the executive director and support staff without a negative impact. The executive director has been designated as the ombudsman/public affairs officer and has assumed the responsibilities. To date the Commission has experienced no decrease in the level of service delivery. The Commission is fully committed to the ombudsman function and will continue to monitor the ombudsman's activities to ensure that claimants and employers continue to receive the highest level of services.

### **Identifying Uninsured Employers**

Recommendation

*The S.C. Workers' Compensation Commission should add an additional compliance officer position to increase fine collections and bring uninsured employers into compliance. (Page 10)*



The Commission appreciates the Council's recommendation to add an additional compliance officer in order to increase fine collections and bring uninsured employers into compliance. In July 2010 the Commission began collecting monthly data for the purpose of establishing a benchmark for performance standards for each of the compliance officers. The requirement for compliance officers to identify 50 potential uninsured employers per month was established in the early stages of the data collection. It has not been validated as a sound benchmark. The Commission will continue to evaluate and improve the process by which the compliance officer identifies and notifies businesses of their potential non-compliance.

The Report recommends the Commission employ an additional compliance officer. Prior to implementing this recommendation and incurring additional expenditures with no guarantees of increased revenues, the Commission will evaluate the performance standard of each officer to determine if each officer's monthly benchmark may be increased. This may result in additional uninsured employers coming into compliance and potentially increasing fine assessments and collections without increasing costs to provide this service by adding additional personnel.

#### **Referral of Claimants to Vocational Rehabilitation**

*The S.C. Workers' Compensation Commission should implement a formal policy for referring claimants to the S.C. Vocational Rehabilitation Department. This policy should ensure that eligible claimants from all South Carolina counties are notified of the S.C. Vocational Rehabilitation Department's services. (Page 11)*

*The S.C. Workers' Compensation Commission should develop a memorandum of understanding with the S.C. Vocational Rehabilitation Department regarding the referral of workers' compensation claimants for vocational rehabilitation services. (Page 11)*

The Commission concurs with the Council's findings and recommendations with regard to improving the efforts to refer claimants needing vocational counseling, evaluation and training. Currently referrals are being obtained by the S.C. Vocational Rehabilitation Department (Voc Rehab) through a periodic review of case files and claimant notification process performed by a Voc Rehab case manager. Cooperative efforts between the Commission and Voc Rehab are underway to prepare a Memorandum of Understanding (MOA) between the agencies, to evaluate the current methods used to inform claimants about services offered by Voc Rehab and develop improved methods for referring claimants on a statewide basis.

#### **Informal Conference Process**

*We found inconsistencies in how the informal conferences were held and found that additional information is needed in the files. (Page 12)*

The Council found inconsistencies in how the informal conferences are conducted and could be improved by establishing guidelines, training claims mediators and requiring checklists to ensure that claimants are informed of their rights. The Commission

recognizes the need for consistency in the informal conference process and will develop a training program for claims mediators to address this. The training will emphasize the necessity of receipt of the required information from the parties for a determination of a proper settlement. A checklist will be developed for use by the informal conference mediators. It will include verification of the information provided to the claimant during the informal conference.

The Commission does not agree with the finding the Commission files examined did not contain sufficient information to assess compliance with the Commission standards with regard to the claims mediator's proposed settlement. The Commission's informal conference system is a voluntary system of mediation. The parties come together by request of either party to try to settle the pending matter.

The facts surrounding each injured worker's case are separate and unique to that individual. There are no statutory or regulatory requirements to document a claimant's disability. Section 42-9-390 of the SC Code of Laws (1976) governs the voluntary settlements between the claimant and the employer/insurance carrier. The settlement agreement between the parties is approved by the claims mediator at the informal conference. The claims mediator's role is to facilitate the discussion between the parties in attempt to reach an agreement. The Commission's role in this process is to ensure any agreement is within the provisions of the statute and regulations. If no agreement is reached, the matter is set for a hearing before the jurisdictional Commissioner. Because each case is individual and unique and the conference is held as an opportunity to reach an agreement between the parties, we see no rational basis for imposing requirements to document justification for the settlement.

Again thank you for the opportunity to comment on the Council's report. We look forward to meeting with the Council auditors within the next twelve months to assess our progress implementing the Council's findings and recommendations.

Sincerely,



T. Scott Beck  
Interim Chairman



## Attachment A

## SC Workers' Compensation Commission Statistical Report

	2007-2008	2008-2009	2009-2010
1. Number of Employers Purchasing Insurance	79,034	76,748	75,006
2. Number of Employers Qualifying as Self-Insurers	3,049	2,605	2,101
3. Investigations Active Beginning of Fiscal Year	228	127	117
4. Investigations Initiated	695	1,092	1,343
5. Investigations Set for Show Cause Hearings/ Consent Agreements Received	113 132	111 344	193 409
6. Total Investigations Closed	796	443	977
7. Investigations Active at Close of Fiscal Year	127	334	421
8. Number of Accident Cases Filed with the Commission	73,795	71,973	58,753
A. New Cases	70,897	70,235	57,178
B. Reopened cases	2,898	1,738	1,575
9. Number of Cases Closed during Fiscal Year	75,251	71,973	62,536
A. Individually Reported Accidents	30,918	26,313	29,044
B. Minor Medical Only Accidents Reported in Summary	44,333	45,660	33,492
10. Total Compensation & Medical Cost Paid on Closed Cases	\$896,565,112	\$922,740,888	\$824,291,483
A. Medical Costs	\$332,226,192	\$422,442,693	\$296,016,200
B. Compensation	\$564,338,920	\$500,298,190	\$528,275,283
11. Temporary Total Compensation Agreements	16,630	15,512	15,580
12. Supplemental Compensation Agreements	3,616	3,600	3,674
13. Applications for Stop Payment *	2,464	2,515	2,206
14. Cases Docketed for Hearings	11,092	9,866	10,912
15. Cases Assigned for Informal Conferences	5,167	3,734	6,264
16. Hearings Conducted by Single Commissioners	2,580	2,345	2,211
17. Informal Conferences Conducted	3,682	3,141	3,549
18. Decisions, Opinions & Orders, Single Commissioners	2,323	2,444	2,100
19. Cases Appealed to Full Commission for Review	876	700	647
20. Reviews Conducted by Full Commission or Panel	446	450	357
21. Decisions and Opinions by Full Commission or Panel	643	504	367
22. Commission Decisions Appealed to Circuit Court	234	219	178
23. Common Law Settlements	10,385	10,506	10,715
24. Attorney Fee Approvals	10,197	9,969	9,343
25. Self-Insurance Tax Collected and Deposited to the General Fund	\$5,480,671	\$5,330,997	\$4,909,303

\* Includes 60-Day Hearings

Source: Amanda Underhill, Information Technology Dept. SCWCC

## Attachment B

Total Indemnity Cost for FY 09-10			
	Agreement	Award	Total
<b>Temporary</b>			
Partial	\$ 3,069,725	\$ 713,271	\$ 3,782,995
Total	\$ 140,201,418	\$ 14,265,450	\$ 154,466,868
Sub Total	\$ 143,271,143	\$ 14,978,721	\$ 158,249,863
% of Total Compensation	27.12%	2.84%	29.96%
<b>Permanency</b>			
Partial	\$ 48,268,482	\$ 10,492,786	\$ 58,761,268
Total	\$ 16,079,756	\$ 3,745,456	\$ 19,825,211
Disfigurement	\$ 397,833	\$ 67,712	\$ 465,545
Death			
Clinchers	\$ 290,973,395		
Sub Total	\$ 355,719,465	\$ 14,305,954	\$ 79,052,024
% of Total Compensation	67.34%	2.71%	14.96%
Total	\$ 498,990,608	\$ 29,284,675	\$ 528,275,283
% of Total Compensation	94.46%	5.54%	100.00%

Source: WCC Statistical Reports, IT Department



## Attachment C

### Total Workers' Compensation Premium for SC

Total Workers' Compensation Premium		Premiums	% of Total Market
CY09	Commercial market - CY 2009 (SCDOI)	\$ 586,955,083	63.10%
FY10	Self-insurance FY 2010 (See Calculations Below)	\$ 253,315,582	27.23%
FY10	State Accident Fund FY 2010 (Est.)	\$ 90,000,000	9.67%
Total		\$ 930,270,665	100.00%

### Self-insurance expenses converted to premium

Expenses X Normalized premium factor = Self-Insurance premium

Self-Insured expenses FY 10	\$ 194,858,140
Normalized premium factor Aug - 2010	<u>1.3</u>
Self-Insured premium FY 10	\$ 253,315,582

Source: Al McCutcheon, Director of Insurance and Medical Services, SCWCC

## Attachment D

8/24/10

Hearings and Appeals Scheduling Report									
FY 02-10									
Line	FY	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10
1	<b>Hearings:</b>								
2	Avg Number of Days to Process Proper Request:	131	167	116	56	45	44	42	29
3	Avg Number of Days to Schedule Hearing:	192	233	183	124	107	98	103	102
4	<b>Appeals:</b>								
5	Avg Number of Days to Process Appeal:	74	119	80	94	69	66	67	77
6	Avg Number of Days to Appeal Hearing	207	206	137	156	131	116	116	117

### Notes:

#### Hearings:

Line 3 Includes the required 30 day period for notification to all parties

#### Appeals:

Lines 5 & 6 includes the required 60 day period for appellate briefs responses.

#### Source:

Amanda Underhill, Information Technology Department, SCWCC



## South Carolina Vocational Rehabilitation Department

*Enabling eligible South Carolinians with disabilities to prepare for,  
achieve and maintain competitive employment.*

Barbara G. Hollis, Commissioner

August 17, 2010

Thomas J. Bardin, Jr., Director  
Legislative Audit Council  
1331 Elmwood Ave., Suite 315  
Columbia, SC 29201

Re: Legislative Audit Council Review letter dated August 10, 2010

Dear Mr. Bardin:

I am writing in response to the Legislative Audit Council's review of the South Carolina Workers' Compensation Commission and the specific finding entitled *Referral of Claimants to Vocational Rehabilitation*. The South Carolina Vocational Rehabilitation Department (SCVRD) agrees that it would be beneficial to implement a more formalized process for referrals of claimants to SCVRD.

Prior to receiving this LAC recommendation, SCVRD had been examining our outreach to individuals receiving Workers' Compensation benefits and had begun meeting to identify ways to ensure that claimants who are eligible for SCVRD are aware of these services statewide. SCVRD welcomes the opportunity to work with the Commission to develop a memorandum of understanding outlining the referral process and the roles and responsibilities of the two organizations. We have historically had a strong, collaborative partnership, and SCVRD looks forward to working together to ensure that eligible claimants have access to our network of offices and services throughout the state.

Thank you for the recommendations that are certainly in keeping with our mission of enabling eligible South Carolinians with disabilities to prepare for, achieve, and maintain competitive employment. Please contact me if you have any questions or need additional information.

Sincerely,

Barbara G. Hollis  
Commissioner

BGH/jah

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This report was published for a total cost of \$37; 80 bound copies were printed at a cost of 47¢ per unit.